



ENVIRONMENTAL PROTECTION AGENCY

[EPA-R06-OW-2022-0371; FRL-9257-02-R6]

Issuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Hydrostatic Testing of New and Existing Vessels in New Mexico (NMG270000), Oklahoma (OKG27F000), and Indian Country within the States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: On February 21, 2023, the Water Division Director for the United States Environmental Protection Agency (EPA), Region 6 signed and issued the final permit of the NPDES General Permit for Discharges from Hydrostatic Testing of New and Existing Vessels in New Mexico (NMG270000), Oklahoma (OKG27F000), and Indian Country within the States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000).

DATES: Pursuant to 40 CFR 123.61 (c) the NPDES General Permit was issued on February 21, 2023, is effective on April 15, 2023, and expires April 14, 2028. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements.

To View and/or Obtain Copies of Documents. A copy of the NPDES General Permit and related documents may be viewed or downloaded, at no cost, from the EPA website at <https://www.epa.gov/publicnotices> or <https://www.regulations.gov> or <https://www.epa.gov/npdes-permits> under New Mexico, Oklahoma, Louisiana and Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Okpala, EPA Region 6, NPDES

Permit Section (R6 WD-PE), 214-665-3152, okpala.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include permittees discharging water to a non-jurisdictional water that flows into a WOTUS that EPA has jurisdiction over, discharges to adjacent land that evaporate, soak in or used for agricultural irrigation but not reach WOTUS even though a groundwater functional equivalent are exempt from NPDES, all resulting from a hydrostatic test from:

- a. New vessels relatively free of pollutants that could be discharged along with the hydrostatic test water. Pollutants in the vessel prior to the hydrostatic test may include construction debris, suspended solids from soil and welding solids, lubricating oil, and pH.
- b. Existing vessels that contain or previously contained or transferred raw or potable water, where the water used for hydrostatic tests does not contain corrosion inhibitors, antifreeze compounds, biocides, or other chemical additives (except chlorine or tracer dyes).
- c. Existing vessels that previously contained only elemental gases (hydrogen, oxygen, nitrogen, etc.); and existing vessels that previously contained or transferred natural gas, natural gas liquids, including condensate, oil, produced water and/or other similar substances.

The areas of coverage are identified Part I, Section A.1 of the final permit, and also stated below:

Master Permit Number	Areas of Coverage/Where EPA Is Permitting Authority
NMG270000	The State of New Mexico, except Indian country within the State of New Mexico.
OKG27F000	Discharges in the State of Oklahoma including certain areas of Indian country covered by an extension of state program authority pursuant to Section 10211 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). ¹
NMG27I000	Indian country within the State of New Mexico, except Pueblo of Laguna and Pueblo of Acoma, Navajo Nation lands that are regulated by EPA Region 9 and Ute Mountain Ute Reservation lands that are regulated by EPA Region 8
TXG27I000	Indian country within the State of Texas
OKG27I000	Indian country within the State of Oklahoma, except areas of Indian Country covered by an extension of state program authority pursuant to Section 10211 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). The areas covered by OKG27I000 are described as: Indian country lands, which include rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. § 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe.
LAG27I000	Indian country within the State of Louisiana

The EPA retains jurisdiction over discharges in these areas. If you have any questions regarding the applicability of this action to a particular entity, please contact Ms. Maria Okpala, EPA Region 6, NPDES Permit Section (R6 WD-PE), 214-665-3152, okpala.maria@epa.gov.

B. What action is the EPA taking?

¹ On December 22, 2021, EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. See <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. EPA is engaging in further consultation with tribal governments and expects to have discussions with the State of Oklahoma as part of this reconsideration. EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20-9635 (10th Cir.). EPA may make further changes to the approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval. Pending completion of EPA's review, EPA is proceeding with notice of this proposed permit in accordance with the October 1, 2020, approval. EPA's final action on this permit will address the scope of coverage of this permit with respect to Indian country which may require appropriate adjustments, based on the status of our review of the SAFETEA approval. If EPA issues a final permit before our review of the SAFETEA approval is complete, EPA may reopen this permit to make further changes to the scope of coverage to reflect the outcome of the SAFETEA review.

The EPA is providing notice of the final NPDES Permit Issuance for discharges from Hydrostatic Testing of New and Existing Vessels in New Mexico (NMG270000), Oklahoma (OKG27F000), and Indian Country within the States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000).

C. What is the EPA's authority for taking this action?

Section 301 (a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311 (a), prohibits the discharge of pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Pollutant Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, 306, 401 (33 U.S.C. 1331, 1314, and 1341) and 403. Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards, and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

Two types of technology-based effluent limitations must be included in the permit proposed here. With regard to conventional pollutants (i.e., pH, biochemical oxygen demand (BOD), oil and grease, TSS, and fecal coliform), CWA section 301 (b) (2) (E) requires effluent limitations based on “best conventional pollution control technology” (BCT). With regard to non-conventional and toxic pollutants, CWA section 301 (b) (2) (A), (C), and (D) require effluent limitations based on “best available pollution control technology economically achievable” (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology

(BPT), a standard applicable to similar discharges prior to March 31, 1989, under CWA 301 (b) (1) (A).

Frequently, EPA adopts nationally applicable guidelines identifying the BPT, BCT, and BAT standards to which specific industrial categories and subcategories are subject. There are no national guidelines for the activities authorized in the final permit. National Guidelines establishing BPT, BCT, and BAT standards have not been promulgated for discharges from the hydrostatic testing of vessels. The BCT and BAT requirements for these discharges have, therefore, been established using BPJ, as required by CWA section 402 (a) (1). Until such guidelines are published, CWA section 402 (a) (1) requires that EPA determine appropriate BCT and BAT effluent limitations in its NPDES permitting actions on the basis of its best professional judgment (BPJ).

Department of Transportation regulations 49 CFR Subchapter D, Part 192, prescribe minimum safety requirements for pipeline facilities and the transportation of gas. Part 192, Subpart J, prescribes minimum leak-test and strength test requirements for pipelines where the test medium must be liquid, air, natural gas, or inert gas. Part 192.515 (b) states that the operator shall insure that the test medium is disposed of in a manner that will minimize damage to the environment. 49 CFR Part 195 prescribes the transportation of hazardous liquids by pipeline.

The Agency may issue “general permits” applicable to a class of similar discharges within a discreet geographical area. See *NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977) and 40 CFR 122.28. Issuance of such permits is not controlled by the procedural rules EPA uses for individual permits but is instead subject to section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, as supplemented by EPA regulations. EPA must, however, comply with the substantive requirements of the CWA without regard to whether it is issuing an individual or general NPDES permit.

II. Public Notification Information

A. Public notice of the Hydrostatic Test General Permit

On April 27, 2022, the EPA, Region 6, commenced the public comment period for the (NPDES) general permit authorizing discharges resulting from the hydrostatic testing of new and existing vessels (e.g., pipelines, storage tanks, etc.) in New Mexico (NMG270000) and Oklahoma (OKG27F000). This authorization also covers Indian Country within the States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000) [EPA-R06-OW-2022-0371; FRL-9257-01-R6].

The notice was also published at <https://www.epa.gov/publicnotices>.

B. Public Process

The EPA Region 6 opened a 60-day public comment period on April 27, 2022, that ended on June 27, 2022 (11:59 pm CST).

EPA held a virtual information Tribal Consultation session via TEAMS on May 18, 2022, with tribal environmental staff at which EPA explained the basis for the general permit and answered any question that the tribe had.

All comments received by the EPA were considered and responded by the EPA with the final general permit. Information about the Factsheet and draft permit are available at www.regulations.gov, Docket ID. No EPA-R06-OW-2022-0371.

III. Summary of Responses to Comments and Clean Water Act Section 401 Certifications

The EPA received 15 written comments from the New Mexico Environment Department. These comments are mostly specific to the New Mexico Water Quality Standards. One major comment was on the request to include operational information in the hydrostatic test monitoring records. The requested monitoring records are:

- a. Start/stop time of testing

- b. Duration of discharge
- c. Volume of discharge
- d. Source water of hydrostatic test water
- e. Disposition location

After due consideration, EPA included the above requested operation information in Part I, Section E of the final permit.

EPA also received Conditions of Certifications from the New Mexico Environment Department, Oklahoma Department of Environmental Quality, all the Region 6 Tribes with CWA Certification Authority except the Pueblo of Laguna and the Pueblo of Acoma. The final permit excluded discharges on the Pueblo of Laguna and the Pueblo of Acoma from this general permit because these two Pueblos denied CWA certification.

Changes from the draft permit to implement e-reporting and e-filing of NOIs have been made to the final permit under the Minor Modification procedures at 40 CFR 122.63(f).

Additional details of the comments received, and responses are available at www.regulations.gov or at <https://www.epa.gov/publicnotices>.

Authority:

This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. I hereby provide public notice of the EPA's final action authorizing the NPDES General Permit for Discharges from Hydrostatic Testing of New and Existing Vessels in New Mexico (NMG270000), Oklahoma (OKG27F000), and Indian Country within the States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000)

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Director, Water Division,
EPA Region 6.

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